

REMARKS

I. Summary of the Office Action

The May 25, 2006 Office Action (hereinafter "Office Action") rejected claims 108-114 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. According to the Office Action, the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that applicants had possession of the claimed invention at the time the application was filed.

Claims 108 and 109 were rejected under 35 U.S.C. § 102(b) as being anticipated by King et al. U.S. Patent No. 3,874,388 (hereinafter "King").

Claims 111 and 113 were rejected under 35 U.S.C. § 103(a) as being obvious over King.

Claims 120-142 were withdrawn from consideration as being directed to a non-elected invention.¹

¹ Although the Office Action Summary indicates that claims 115-142 are withdrawn from consideration, applicants submit that the Office Action Summary is in error and only claims 120-142 should be withdrawn, as stated within the Office Action. (See Office Action, page 4).

II. The 35 U.S.C. § 112 Rejection

The Office Action rejected claims 108-114 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. According to the Office Action, "[a]pplicant has amended claim 108 wherein 'only one set of fingers is covered by a web of material between adjacent ones of fingers' which is new matter." (Office Action, page 3). The Office Action also contends that applicants' specification "only supports a connector" having either or both ends covered with a web and not a device for closing septal defects. Id. Applicants respectfully traverse the 35 U.S.C. § 112 rejection.

Applicants submit that independent claim 108 and dependent claims 109-119 are described in the specification in such a way as to reasonably convey to one skilled in the art that applicants had possession of the claimed invention at the time the application was filed. For example, applicants' specification teaches that "a web 110 of highly elastic material such as silicone" may be included between adjacent fingers 14. (Specification, page 22, lines 26-29). Applicants' specification also teaches that such a web may be provided "at either or both ends of medial portion 16."

(Id., emphasis added). Applicants submit that from these statements, it is clear that applicants' specification supports only one set of fingers covered by a web of material, as recited by independent claim 108.

Furthermore, contrary to the Office Action's contention, applicants' specification supports both graft connectors and devices for plugging or closing septal defects. (See, e.g., Specification, "Background of the Invention" and "Summary of the Invention" sections). In the very next paragraph after describing that the web of material may be provided at "either or both ends of medial portion 16," applicants' specification teaches that "many of the features shown in FIGS. 14-26 are applicable to plugs as well as graft connectors." (Specification, page 23, lines 1-4). Applicants submit, therefore, that the embodiment of only one set of fingers covered by a web of material applies equally to both graft connectors and plugs.

For the aforementioned reasons, applicants respectfully submit that claims 108-119 are fully supported by applicants' specification. Accordingly, applicants request that the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

III. The 35 U.S.C. § 102 Rejection

In rejecting applicants' claims under 35 U.S.C. § 102, the Office Action points to King's embodiment shown in FIG. 15A. (See Office Action, page 5). The Office Action contends that this embodiment shows all of applicants' claimed features recited in independent claim 108. Id. Applicants respectfully disagree.

Independent claim 108 is directed to a device for use in closing septal defects. The device includes a medial portion having a longitudinal axis. First and second sets of fingers are mounted on the medial portion and are capable of extending substantially radially outward from the axis. The first and second sets of fingers are spaced an axial distance apart from each other on the axis. Only one of the set of fingers is covered by a web of material between adjacent ones of the fingers.

Contrary to the Office Action's contention, King does not show or suggest two sets of fingers "spaced an axial distance apart from each other," as recited by applicants' independent claim 108. Rather, King's FIG. 15A refers to a single set of umbrella struts connected to a second set of elevating struts. The elevating struts support the umbrella struts and cause the umbrella struts to open, opening the

covered umbrella. (See King, column 8, lines 55-65 and FIGS. 15A-15C).

Since King's elevating struts and umbrella struts are always connected to each other, the two set of struts cannot be considered two sets of fingers, nor can they be considered "spaced an axial distance apart from each other," as recited by applicants' independent claims. Connected elements cannot be spaced an axial distance apart from each other.

Because King fails to show or suggest two sets of fingers spaced an axial distance apart from each other, King also fails to show or suggest "wherein only one set of fingers is covered by a web of material between adjacent ones of the fingers," as also recited in applicants' independent claim 108. Rather, all of King's embodiments describe umbrella structures with sheet material folded or stretched flat over the struts. (See King, column 6, lines 49-65). Even the embodiment of King that the Office Action points to (i.e., King's FIGS. 15A-15C) shows both umbrella 209 (left umbrella) and umbrella 8 (right umbrella) covered with sheet material. (Id.; King, column 8, lines 62-65). Although King's elevating struts may be uncovered, once the umbrella structure is fully opened in its deployed state, the

elevating struts are also covered with sheet material. (See King, FIGS. 15A-15C and column 8, lines 62-65). Moreover, for the reasons described above, these elevating struts cannot be considered a second set of fingers spaced an axial distance from a first set of fingers.

As described in applicants' specification, the covering of one set of fingers provides many potential benefits, including "enhanced sealing and faster clotting." (Specification, page 22, lines 29-30). The uncovered set of fingers allow for a minimal footprint, reducing any chance of embolism or potential stroke. Applicants submit that the combination of one set of fingers covered with a web of material and one set of uncovered fingers is, in itself, a patentable improvement over the prior art of record.

For at least these reasons, applicants submit that independent claim 108 is allowable over King. Dependent claims 109-119, which contain all the limitations of independent claim 108, are allowable for at least the same reasons.

IV. The 35 U.S.C. § 103(a) Rejection

The Office Action rejected claims 111 and 113 under 35 U.S.C. § 103(a) as being unpatentable over King. The

Office Action's rejection is respectfully traversed.

Applicants submit that dependent claims 111 and 113 are allowable over King for at least the same reasons that independent claim 108 is allowable. Accordingly, the rejection of claims 111 and 113 under 35 U.S.C. § 103(a) should be withdrawn.

V. Conclusion

In view of the foregoing, claims 108-119 are in condition for allowance. Reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,



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